

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number: EB-06-MA-046
Adilson Alves de Almeida	)	
	)	NAL/Acct. No. 200732600001
Boca Raton, Florida	)	
	)	FRN: 0009331521
	)	

**FORFEITURE ORDER**

**Adopted:** December 6, 2010

**Released:** December 8, 2010

By the Regional Director, South Central Region, Enforcement Bureau:

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven hundred fifty dollars (\$750) to Adilson Alves de Almeida (“Mr. de Almeida”)<sup>1</sup> for his willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>2</sup> The noted violations involve Mr. Almeida’s operation of an unlicensed radio transmitter.

## **II. BACKGROUND**

2. On December 6, 2006, in response to a complaint of interference from an authorized government user, agents from the Enforcement Bureau’s Miami Office (“Miami Office”) investigated unlicensed radio activity in the Boca Raton, Florida area. On this date and two subsequent dates – December 27, 2006 and January 11, 2007 – the agents monitored transmissions on the frequencies 294.080 MHz, 296.550 MHz, and 294.023 MHz, respectively, from over four miles from the signals’ source. The agents, using direction-finding techniques, located each of these transmissions to Mr. de Almeida’s residence in Boca Raton<sup>3</sup> and determined that the field strengths of these transmissions exceeded the limits for unlicensed operation under Part 15 of the Commission’s Rules (“Rules”).<sup>4</sup> Moreover, the 267-322 MHz frequency band is allocated solely for Federal Government use and Mr. de Almeida would therefore not be eligible for a license to operate in this band.<sup>5</sup> On April 19, 2007, the Miami Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Mr. de Almeida for operation of a radio transmitter without a license.<sup>6</sup> Mr. de Almeida submitted a response to the NAL requesting cancellation of the forfeiture, based on his removal of the Yagi-type antenna from his roof, his

<sup>1</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732600001 (Enf. Bur., Miami Office, rel. April 19, 2007) (proposing \$10,000 forfeiture); *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832600001 (Enf. Bur., Miami Office, rel. September 25, 2008) (proposing \$20,000 forfeiture).

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> On December 27, 2006 and January 11, 2007, agents observed a Yagi-type antenna mounted at the roof level in the back of the residence.

<sup>4</sup> Section 15.209 of the Rules provides that non-licensed broadcasting between 216-960 MHz band is permitted only if the field strength of the transmission does not exceed 200 µV/m at three meters. 47 C.F.R. § 15.209. Devices compliant with Part 15 typically have a range of less than one mile.

<sup>5</sup> 47 C.F.R. § 2.106.

<sup>6</sup> NAL, NAL/Acct. No. 200732600001 (Enf. Bur., Miami Office, rel. April 19, 2007).

expressed regret, and his assurance that radio interference would not happen again.<sup>7</sup>

3. On September 15, 2008, in response to another complaint of interference from an authorized government user, agents from the Miami Office again investigated unlicensed radio activity in the Boca Raton area. The agents monitored transmissions on the frequency 297.235 MHz from approximately one mile from the signal's source. The agents, using direction-finding techniques, located the transmissions to Mr. de Almeida's residence in Boca Raton. That same day, agents inspected Mr. de Almeida's radio station and found an Alinco transceiver that was programmed to operate on 297.235 MHz.<sup>8</sup> Given the output power and the fact that it was not certified for use as a Part 15 device, the agents determined that the Alinco transceiver could not be operated pursuant to Part 15 of the Rules.<sup>9</sup> Moreover, the 267-322 MHz frequency band is allocated solely for Federal Government use and Mr. de Almeida would therefore not be eligible for a license to operate in this band.<sup>10</sup> On September 25, 2008, the Miami Office issued a *Notice of Apparent Liability for Forfeiture* ("Second NAL") in the amount of \$20,000 to Mr. de Almeida for operation of a radio transmitter without a license.<sup>11</sup> Mr. de Almeida submitted a response to the *Second NAL* requesting cancellation of the forfeiture based on his claim that he did not operate a radio transmitter on an unlicensed basis and his inability to pay the proposed forfeiture.<sup>12</sup>

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>13</sup> Section 1.80 of the Rules,<sup>14</sup> and the Commission's *Forfeiture Policy Statement*.<sup>15</sup> In examining Mr. de Almeida's responses, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>16</sup> As discussed below, we have considered Mr. de Almeida's responses in light of these statutory factors and reduce the proposed forfeitures to \$750, based solely on Mr. de Almeida's documented inability to pay.

5. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.<sup>17</sup> Agents from the Miami Office determined that, on December 6 and December 27, 2006, January 11, 2007, and September 15, 2008, an unlicensed radio station operated on frequencies 294.080, 296.550, 294.023, and 297.235 MHz, respectively, from Mr. de

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<sup>7</sup> Letter from Adilson Alves de Almeida to South Central Region, Enforcement Bureau (April 25, 2007).

<sup>8</sup> According to the Alinco manufacturer specifications, at its lowest setting, the Alinco radio was capable of operating with approximately 5 watts of power.

<sup>9</sup> 47 C.F.R. § 15.201(b).

<sup>10</sup> 47 C.F.R. § 2.106.

<sup>11</sup> *Second NAL*, NAL/Acct. No. 200832600001 (Enf. Bur., Miami Office, rel. September 25, 2008).

<sup>12</sup> Letter from Adilson Alves de Almeida to South Central Region, Enforcement Bureau (October 14, 2008).

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 C.F.R. § 1.80.

<sup>15</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999).

<sup>16</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>17</sup> 47 U.S.C. § 301.

Almeida's residence in Boca Raton, Florida.<sup>18</sup> Mr. de Almeida is not eligible for a license to operate on these frequencies.<sup>19</sup> Thus, based on the evidence before us, we find that Mr. de Almeida willfully<sup>20</sup> and repeatedly<sup>21</sup> violated Section 301 of the Act by operating radio transmission apparatus without a license.

6. In response to the *NAL*, Mr. de Almeida admitted to operating a radio transmitter, apologized for any inconvenience he had caused, and stated he took down his Yagi-type antenna and would not cause similar problems again. In response to the *Second NAL*, Mr. de Almeida denied operation, claiming that he did not have an antenna for his transceiver and noting that none was found during the agents' inspection of his residence on September 15, 2008. However, he provided no explanation for why the signals on the frequency 297.235 MHz had been emanating from his residence on this date prior to the agents' inspection.<sup>22</sup> Accordingly, we are unpersuaded by Mr. de Almeida's claims that he did not operate radio transmission apparatus without a license on September 15, 2008.

7. Finally, Mr. de Almeida requests cancellation of the forfeitures because he has no income and is a dependent of his son. He submits his three most recent years of tax returns to substantiate his claim. In analyzing a financial hardship claim, the Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>23</sup> We have reviewed the documentation provided by Mr. de Almeida and conclude that reduction of the forfeitures to \$750 is warranted based solely on his lack of income and the fact that he is a dependent of his son. We decline, however, to cancel the proposed forfeitures, due to the seriousness and repeated nature of the violations. In addition, we caution Mr. de Almeida that further violations of our rules may be subject to more severe enforcement penalties, including seizure of equipment and criminal sanctions.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Adilson

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<sup>18</sup> 47 C.F.R. §§ 15.209, 15.201(b).

<sup>19</sup> Pursuant to the Table of Allocations, the 267-322 MHz Band is allocated solely for Federal Government Use. 47 C.F.R. § 2.106.

<sup>20</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>21</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd at 4388; *Western Wireless Corporation*, 18 FCC Rcd 10319, 10328 n.56 (2003).

<sup>22</sup> On September 15, 2008, agents from the Miami Office found the source of the transmissions on 297.235 MHz at approximately 11:38 AM and were seen by Mr. de Almeida at approximately 11:48 AM. They left the area after being seen by Mr. de Almeida and did not return to inspect Mr. de Almeida's residence until 1:25 PM. Mr. de Almeida could have removed the antenna between 11:48 AM and 1:25 PM.

<sup>23</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

Alves de Almeida **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven hundred fifty dollars (\$750) for violations of Section 301 of the Act.<sup>24</sup>

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>25</sup> Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Mr. de Almeida shall also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent both by First Class and by Certified Mail Return Receipt Requested to Adilson Alves de Almeida at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

<sup>24</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>25</sup> 47 U.S.C. § 504(a).